

THE FTC IS CLOSED DUE TO THE LAPSE IN GOVERNMENT FUNDING.

[Learn about the status of FTC online services and website information updates during the lapse in funding.](#)



FEDERAL TRADE COMMISSION
PROTECTING AMERICA'S CONSUMERS

Administrative Law Judge Upholds FTC's Complaint that 1-800 Contacts Unlawfully Harmed Competition in Online Search Advertising Auctions, Restricting the Availability of Truthful Advertising to Consumers

Share This Page

FOR RELEASE

October 30, 2017

TAGS: [Internet commerce](#) | [restrictions on advertising](#) | [Technology](#) | [Bureau of Competition](#) | [Competition](#) | [Nonmerger](#) | [Horizontal Restraints](#)

In an [Initial Decision](#) announced today, Chief Administrative Law Judge D. Michael Chappell upheld a Federal Trade Commission complaint against 1-800 Contacts, ruling that the agency has proved that the nation's largest online retailer of contact lenses unlawfully orchestrated a web of anticompetitive agreements with rival online contact lens sellers.

"The Challenged Agreements restricted advertisements for the sale of contact lenses on the internet by prohibiting competitors from presenting paid advertisements on the search engine results page in response to searches for 1-800 Contacts' trademarks," Judge Chappell wrote in the decision. He concluded that the "evidence in this case demonstrates that the advertising restraints imposed by the Challenged Agreements cause harm to consumers and competition in the market for the sale of contact lenses online. This is sufficient to establish Complaint Counsel's prima facie case that the agreements are anticompetitive. The evidence fails to prove that the Challenged Agreements have countervailing procompetitive benefits that outweigh or justify the demonstrated anticompetitive effects of the Challenged Agreements. Accordingly, the Challenged Agreements violate Section 5 of the FTC Act."

An order Judge Chappell included with the Oct. 20, 2017 Initial Decision would bar 1-800 Contacts from agreeing with a marketer or seller of any contact lens product to restrict, prohibit, regulate or otherwise limit that seller's participation in search advertising auctions, and would also bar 1-800 Contacts from instructing search engines to restrict or prohibit any seller's use of any keyword (a word or phrase used to instruct a search engine to display specified search advertising), or to require any seller to use any negative keyword (a word or phrase used to instruct a search engine not to display specified search advertising).

Also under the order, 1-800 Contacts would be barred from agreeing with a seller to restrict, prohibit, regulate or otherwise limit that seller's use of truthful, non-deceptive, and non-trademark-infringing advertising or promotion. The order would also require the company to stop enforcing or attempting to enforce any and all provisions, terms, or requirements in any existing agreement or court order that impose a condition on a seller that would be inconsistent with the order.

According to the [FTC's administrative complaint, 1-800 Contacts](#) entered into bidding agreements with at least 14 competing online contact lens retailers that eliminated competition in auctions to place advertisements on the search results page generated by online search engines such as Google and Bing. The complaint alleges that these bidding agreements constituted an unfair method of competition in violation of federal law, by unreasonably suppressing price competition in certain online search advertising auctions, and restricting truthful and non-misleading advertising to consumers. As a result, some consumers paid higher retail prices for contact lenses, the complaint stated.

The Appeals Process. The Judge's Initial Decision is subject to review by the full Federal Trade Commission on its own motion, or at the request of any party. The Initial Decision will become the decision of the Commission 30 days after it is served upon the parties, unless a party files a timely notice of appeal – and thereafter files a timely appeal brief – or the Commission places the case on its own docket for review or stays the effective date of the decision.

PRESS RELEASE REFERENCE:

[FTC Sues 1-800 Contacts, Charging that It Harms Competition in Online Search Advertising Auctions and Restricts Truthful Advertising to Consumers](#)
[FTC Commissioners Find that 1-800 Contacts Unlawfully Harmed Competition in Online Search Advertising Auctions, Restricting the Availability of Truthful Advertising to Consumers](#)

Contact Information

MEDIA CONTACT:

[Betsy Lordan](#)

Office of Public Affairs

202-326-3707



ftc.gov